

June 21 2006

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

PR
06-0120

FILED

JUN 21 2006

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANAIN RE THE MARRIAGE OF,
RHONDA ELAINE BAKER
DAMSCHEN,

Joint Petitioner,

v.

DONALD DAVID DAMSCHEN,

Joint Respondent.

ORDER

Rhonda Elaine Baker Damschen, by counsel (Rhonda) has filed a motion to remove the Honorable Edward C. McLean, District Judge, for cause, pursuant to § 3-1-805, MCA, in Missoula County Cause No. DR-00-544. Her counsel has filed a certificate of counsel, indicating that Rhonda has filed her affidavit in support of request for disqualification in good faith. The Clerk of the District Court, Missoula County, has referred the affidavit to this Court, pursuant to § 3-1-805(1), MCA.

Section 3-1-805(1)(b), MCA, provides that an affidavit of disqualification will be deemed not to have been made in good faith if it based solely on rulings in the case which can be addressed in an appeal from the final judgment. We have reviewed the affidavit filed by Rhonda. While she argues that Judge McLean has a personal bias against her, it is clear from her affidavit that she predicates this accusation upon rulings previously made by Judge McLean over the several years that these proceedings have been pending. Under the Rule, in that Rhonda's affidavit is based upon rulings made in the case, the affidavit is deemed not to have been made in good faith. We therefore determine that Rhonda's motion does not establish personal bias.

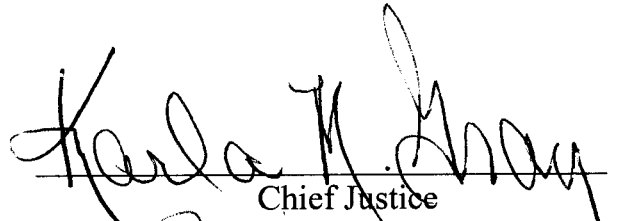
IT IS THEREFORE ORDERED:

1. Pursuant to § 3-1-805(1)(c), MCA, the affidavit of disqualification filed by Rhonda in this cause is hereby set aside as void.

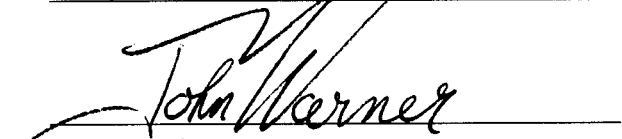
2. Rhonda's motion to disqualify the district judge in Missoula County Cause No. DR-00-544, is DENIED.

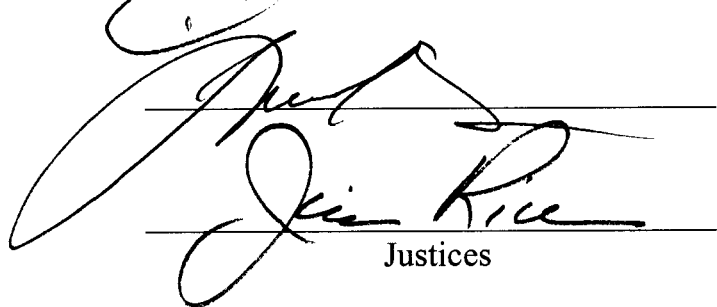
3. The Clerk of this Court is directed to mail a true copy hereof to the Clerk of the District Court of Missoula County, for notification to counsel of record in Cause No. DR-00-544, and to the Honorable Edward P. McLean, District Judge.

DATED this 21 day of June, 2006.


Chief Justice






Justices